The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? YES

For the petitioner(s):Mr.G.D.Verma, Senior Advocate,
with Mr.Romesh Verma, Advocate

For the respondent(s): Mr.Dinesh Kumar, Advocate

Deepak Gupta,J.

This revision petition clearly demonstrates how a technical approach to judicial matters results in total failure of justice for all concerned.

One Gokal filed a suit for declaration to the effect that he had become owner of ½ share of the land comprised in Khata/Khatauni No. 19/37, Khasra Nos. 12 and 19 measuring 23-13 bighas in Chak Rampur, Tehsil Arki, District Solan, H.P. by efflux of time as statutory period to redeem mortgage had expired and the right to redeem the mortgage stood extinguished. In the alternative it was prayed that he had become owner by

village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P."

An application for amendment of the plaint was filed even before the defendants were served. In the meantime, defendant no. 2 was served and he filed reply to the application for amendment which application was allowed on 8.8.1983. In the amended plaint filed with this application the name of defendant No. 2 was described as follows:-

> "Ishwar Datt, son of Shib Ram, resident of village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P."

The original plaintiff Gokal died and his legal representatives Thambo (widow) and Devi Roop (son) were ordered to be brought on record vide order dated 30.6.1984.

Written statement to the amended plaint was filed by defendant No. 2 in which the defendant No. 2

"Ishwar Dass, son of Shib Ram, resident of village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P."

The fact that the name of defendant No. 2 had been changed from Inder Datt to Ishwar Datt and then to Ishwar Dass was not detected either by the court or by the parties or their counsel. Written statement to this amended plaint was filed by defendant No. 2. In the heading of the written statement defendant No. 2 was described as Inder Dutt, son of Shib Ranm. The suit was finally decreed vide judgment dated 9th July, 1986. In this judgment and decree defendant no. 2 was described as Ishwar Dass, son of Shib Ram. It is apparent from the record that neither the plaintiff nor defendant No. 2 ever discovered that the name of Inder Datt had firstly been changed to Ishwar Datt and finally to Ishwar Dass. It was Inder Datt who filed the written statement. It was he who contested the suit. Inder Datt

No objection was taken by Devi Roop or Smt. Thamboo that appeal was not property constituted. Smt. Thamboo died during the pendency of the appeal and her name was deleted. The appeal was admitted and was heard and decided by the learned District Judge, Solan on 31.10.1990. The learned District Judge held that the appeal was not maintainable and dismissed the same accordingly. The operative portion of the judgment of the learned District Judge reads as follows:-

> '3. The said suit was decreed vide judgment and decree , dated July 9, 1986 whereby Smt. Thumbo was declared to have become the owner of the land to the extent of half share comprising in Khata/Khatauni No. 19/37 and Khasra No. 12 and 19 by way of adverse possession. The decree was passed against defendants No. 1 and 2, namely, Sh. Gorkhu and Ishwar Dass. No appeal has been filed either by Sh. Gorkhu or Sh. Ishwar Dass. No judgment or decree has been passed

face of it, is not maintainable at the instance of the present appellant. The same is accordingly dismissed with no orders as to costs."

The approach of the learned District Judge to say the least was hyper technical. The original suit had been filed against Inder Dutt. It was Inder Dutt who had been contesting the suit throughout. It was Inder Dutt who had filed the appeal. It appears that during the course of proceedings when the amendment application was filed the name of Inder Dutt firstly got changed to Ishwar Dutt and finally to Ishwar Dass. No application had ever been filed for changing the name of the defendant. In my opinion even if the learned District Judge was of the view that the appeal was not properly constituted he should have either suo motu ordered the correction of the judgment and decree sheet as well as the amended plaints or in the alternative should have asked the parties to file appropriate application in this

been permitted to be corrected.

However, no party challenged the judgment of the learned District Judge which attained finality. It was obvious that Inder Dutt was happy with the order since the learned District Judge had held that there was no decree against him. The learned District Judge had dismissed the appeal on 31.10.1990. The plaintiff also slept over the matter and finally an application was filed by Devi Roop on 4.10.1997 before the trial court under Section 152 and 153 CPC for amendment of the judgment and decree to show that Inder Dutt and Ishwar Dass are the same person and that the name of defendant no. 2 be shown as Inder Dutt @ Ishwar Dass, son of Shib Ram. Notice of this application was sent to the judgment debtors. Inder Dutt again put in appearance through a counsel. Thereafter Gorkhu defendant/judgment debtor No.1 died and the case was

the trial court since the appeal was dismissed by the appellate court by holding that Inder Dutt was not party to the original proceedings and the appeal had been disposed of not under Order XXXXI Rule XI, but after hearing the parties, he had no right to exercise the jurisdiction under Section 153-A CPC. Further, according to him in case the judgment/decree is amended it would amount to setting aside the judgment/decree passed by the learned District Judge which power was not vested in him. The present revision petition is directed against this order.

I have heard Mr.G.D.Verma, learned Senior Advocate, for the petitioner and Mr.Dinesh Kumar, learned counsel for respondents No. 5 & 6 Smt. Kanta and Om Parkash, the legal representatives of Inder Dutt.

not been disposed of on merits by the appellate court, but had been dismissed as not being maintainable and, therefore, the trial court had the jurisdiction to make the necessary corrections. On the other hand it is contended by Mr.Dinesh Kumar, Advocate, that the case is not as set up by the petitioner, but it was a deliberate attempt on the part of the petitioner to mis-guide the court. He further submits that the petitioner till date has not filed any application for amendment of the amended plaint. Further, according to him the application having been filed at a highly belated stage is liable to be dismissed either on the ground of delay or on account of laches.

The first question which arises for decision is as to whether there is any limitation prescribed for making the correction or not.

otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

153-A.Power to amend decree or order where appeal is summarily dismissed.- Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of conforming the decree or order, as the case may be, passed by the Court of first instance."

A perusal of these provisions clearly shows that the power to amend and correct the clerical and arithmetical mistakes in a judgment, decree or order may be exercised at any time under Section 152. Similarly, Section 153 gives power to the court to amend

The only fetter to this power is that no court should under these provisions or in the exercise of its inherent powers amend or correct the mistake if it is inequitable or inexpedient to do so, especially where third parties have acquired rights. In the present case no third parties are involved and rights of both the parties can be protected even if proceedings are ordered to be amended at this belated stage. One of the reasons why the courts have held that there can be no limitation for correcting the mistake is that no party should suffer because of the mistake of the court. In **Australian Steam Navigation Co Vs. Smith & Sons (1889) 14 Appeal Cases 318** the Privy Council held thus:-

> "Their Lordships are strong advocates for amendment whenever it can be done without injustice to the other side, and even where they have been put to certain expense and delay, yet if they can be compensated for that in any way it

are held powerless to do justice by correcting their own errors and defects only on the ground of limitation. The contention is, therefore, rejected.

The next question which has been raised is whether dismissal of the appeal would be a bar to the trial court exercising the powers under Sections 152 and 153 C.P.C. Section 153-A of the Civil Procedure Code lays down that where the appellate court dismisses an appeal in limine without issuing notice to the respondents, the power to amend a judgment or order under Section 152 CPC may be exercised by the court which had passed the original judgment, decree or order. In the present case admittedly the appeal was not dismissed in limine. On the other hand, the appeal was not decided on merits also by the learned District Judge. The appeal was dismissed as not maintainable.

Vs. Shri Ratan Lal Singh AIR 1974 SC 1380 held as follows:-

> "The fundamental reason of the rule that where there has been an appeal, the decree to be executed is the decree of the appellate court is that in such cases the decree of the trial court is merged in the decree of the appellate court. In course of time, this concept which was originally restricted to appellate decrees on the ground that an appeal is a continuation of the suit, came to be gradually extended to other proceedings like revisions and even to proceedings before quasi-judicial and executive authorities."

In view of the law laid down by the Apex Court it is clear that if the decree of the trial court has merged in the decree of appellate court then of course the trial court has no jurisdiction to amend the same. In the present case, however, I am of the opinion that the decree of the trial court never merged in the decree of

been dismissed in limine. It does not take away the powers otherwise vested in the trial court. As observed above, the principle underlying this section is the doctrine of merger that once an appellate court has passed a decision then the judgment of the trial court will merge in the judgment of the appellate court and it will cease to have jurisdiction to amend its own judgment, decree or proceedings. The appellate court only disposed of the matter by holding that Inder Dutt had no right to file the appeal since no decree had been passed against him. Therefore, the question of merger does not apply and Section 153-A would not be attracted. The mere fact that the appeal was decided after notice and not in limine would not take away the jurisdiction of the trial court to amend its judgment and decree because of the fact that there was no decision on the case by the learned District Judge.

to thwart the ends of justice and to avoid adjudication on merits. Reference in this behalf may be made to the judgment of the Constitutional Bench of the Apex Court in **Sardar Amarjit Singh Kalra (dead) by LRs and others Vs. Pramod Gupta (SMT) (DEAD) by LRs. and others (2003) 3 SCC 272** wherein the Apex Court held as follows:-

> "26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. . . . . ."
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> "31. x x x x x x x. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to

act in such a manner so as to do substantial justice between the parties. The approach of the learned District Judge, as already observed, was hyper technical in nature. It appears that the learned District Judge was swayed by the fact that the case was an old case. Every case has a face behind it. No Judicial Officer should lose sight of the fact that a case is not merely a number in his docket, but there are human beings behind the case. They come to the court for redressal of their grievances. Their grievances may be justified or un-justified. Unless there is statutory mandate directing otherwise the effort should always be to appreciate the grievances on merits and decide them in accordance with law. The cases should not be slaughtered at the alter of disposal. No doubt it is important to dispose of cases, but mere disposal of cases without doing justice will set to naught

plaint showing the name of defendant No. 2 as Inder Dutt. Thereafter the trial court shall amend its judgment and decree to reflect the correct name of defendant No. 2, i.e. Inder Dutt, son of Shiv Ram, resident of village Pakhred, Pargana Sandhurat, Tehsil Arki, District Solan, H.P. The parties are directed to appear before the trial court on 19th June, 2006 on which date the plaintiff shall file the two fresh amended plaint. Thereafter the trial court shall amend the judgment and decree. The heirs of Inder Dutt shall have the right to challenge the amended judgment and decree within a period of 30 days after exclusion of time for obtaining copy of the amended judgment and decree by filing appeal before the learned District Judge. Though the amendment shall relate back to the date of original judgment and decree, however, for the purposes of limitation the time for filing the appeal by the legal representatives of Inder Dutt shall be reckoned

court shall dismiss the application of the plaintiff for amendment of the decree for non compliance of the orders of this court.

The revision petition is disposed of in the aforesaid terms.

May 17, 2006(K) **(Deepak Gupta),J.**